

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

GALE KEITH GEMBER,)	CASE NO. 4:07CV3173
)	
Plaintiff,)	
)	MEMORANDUM
v.)	AND ORDER
)	
CITY OF LINCOLN,)	
)	
Defendant.)	

Following initial review of the plaintiff's complaint, the plaintiff was given until October 12, 2007, to file an amended complaint. As set forth in the court's prior memorandum and order, the plaintiff's complaint alleged that documents he authored were destroyed by the City of Lincoln public library. His complaint sought damage recovery from the City for violation of his First Amendment rights.

The court's order on initial review explained:

The plaintiff alleges that the City destroyed his "writings and authored works formally found in the Heritage Collection of Nebraska Authors - Lincoln Public Libraries." Filing No. 1, p. 2. Read liberally, this statement may mean the plaintiff owned the writings at issue, and they were merely presented to or being held by the library when they were allegedly destroyed. The plaintiff also fails to allege specifically how the City is responsible for the destruction of the documents; that is, he has not alleged the basis for claiming the City had a duty to retain the documents or how it breached that duty.

...

The plaintiff's complaint alleges only that documents he wrote were destroyed and cannot be found at the City's library. The plaintiff has failed to allege that his works were destroyed pursuant to any official city policy or governmental custom, and he has failed to allege any loss of a property interest in the writings or any violation of his First Amendment rights. The plaintiff's complaint fails to state a claim against the City. However, the plaintiff will be afforded leave to file an amended complaint.

Filing No. 7, pp. 2, 4.

The following response from the plaintiff, set forth hereafter in its entirety, was filed on October 11, 2007:

I filed court petition due to comments stated by Library Director Carol Conner during Small Claims Court action (SC 05-556). Should I continue loaning any more material to the collection, that this too would be destroyed.

To make such a comment suggests a vindictive nature toward me personally for reasons that remain unclear. Court procedure/action might be the remedy to uncover such reasons (with the help of court appointed counsel).

Filing No. 8, p. 1.

The plaintiff's response does not identify a City custom or policy underlying the plaintiff's complaint. Rather, as alleged by the plaintiff, he suspects a City employee is destroying his authored works out of spite, and he initiated this lawsuit to discover the reason behind her "vindictive nature."

The plaintiff's complaint, as supplemented by Filing No. 8, fails to state a damage claim against the City of Lincoln.

IT IS ORDERED:

1. The above-entitled case and the plaintiff's complaint are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B); and
2. Judgment will be entered in accordance with this Memorandum and Order.

DATED this 16th day of October, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge